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DWCNewsline

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Notice of rulemaking for utilization review enforcement regulations and administrative penalties for unreasonable denial of compensation

The Division of Workers' Compensation (DWC) proposed regulations for utilization review enforcement and administrative penalties for unreasonable denial of compensation will be published in the California Notice Register on Apr. 28, 2006. A public hearing has been scheduled for Friday, Jun. 29, 2006, at the state building in Oakland. Members of the public may comment on the proposed regulations until 5 p.m. on that day.

The proposed utilization review enforcement regulations are authorized by Labor Code section 4610, which requires every employer to have and use a utilization review process, and sets out timelines and conditions to be met whenever a request for authorization of medical treatment will be delayed, modified or denied.

While utilization review has generally proven an effective deterrent to unnecessary medical treatment, it is also important to ensure that employers, insurers or other entities do not improperly delay, deny or modify recommended treatment for injured employees.

The proposed regulations in this rulemaking deter improper delays, denials and modifications of recommended treatment for injured workers and compel compliance with the law¹. They also:

- ❖ Describe the investigative procedures to be used by the DWC administrative director (AD) in determining whether Labor Code section 4610 has been violated (section 9792.11)
- ❖ Set out a penalty schedule for violations (section 9792.12)
- ❖ Identify factors the AD will consider in adjusting the proposed penalty amounts for violations (section 9792.13)
- ❖ Address liability for penalties among principals, agents and successors of an entity found in violation of Labor Code section 4610 (section 9792.14)
- ❖ Explain the charging, appeal and hearing process to be used after violations are found (section 9792.15).

¹ Labor Code § 4610(i)

The proposed regulations under Labor Code section 5814.6 provide for administrative penalties for unreasonable delay or refusal to pay compensation. Unreasonable delays or denials of compensation payments to injured employees undermine the central purpose of California's workers' compensation system. The law² provides a remedy for such abuse by authorizing workers' compensation judges to impose penalties for violations found in individual cases. These proposed regulations provide a remedy where multiple violations by a particular claims administrator indicate the existence of a general business practice of knowing and unreasonable delays or denials: Penalties will be assessed and all penalties collected will be deposited into the Workers' Compensation Return-to-Work Fund, established to promote the early and sustained return to work of employees following work-related injuries or illnesses.

The proposed regulations implement, interpret and make specific the provisions of Labor Code section 5814.6 by:

- Defining particular entities that are subject to the administrative penalties
- Specifying criteria the AD must consider in finding that violations were knowing
- Specifying the criteria the AD must consider in determining the frequency of violations indicates the existence of a general business practice
- Establishing a schedule of penalties to be imposed based upon the nature, severity, frequency and duration of the relevant violations
- Specifying administrative procedures to be followed in assessing the administrative penalties and in appealing penalty assessments, allowing for due process.

The notices of proposed rulemaking, initial statements of reasons, and the proposed regulations for both rulemaking packages have been posted at the DWC Web site at:

http://www.dir.ca.gov/dwc/DWCPropRegs/AdminPenalties_LC5814_6Regulations/LC5814_6Regulations.htm

http://www.dir.ca.gov/dwc/DWCPropRegs/UREnforcementRegulations/UR_EnforcementRegulations.htm

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² Labor Code § 5814